ARC 6474C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to eligibility for the home- and community-based services habilitation program and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

The purpose of this proposed rule making is to amend the needs-based and risk-based eligibility criteria for the Home- and Community-Based Services (HCBS) Habilitation program to reflect the changes to the state plan amendment that the Centers for Medicare and Medicaid Services require as a condition of approval because of the maintenance of effort requirements established by the American Rescue Plan Act of 2021, Section 9817. The enhanced Federal Medicaid Assistance Percentage for HCBS services requires states to not impose stricter eligibility standards, methodologies, or procedures for HCBS programs and services than were in place on April 1, 2021.

Federal rules require that individuals who were found eligible for the state plan HCBS benefit before modification of the needs-based criteria under this state plan adjustment must remain eligible for the HCBS benefit until such time as:

1) The individual no longer meets the needs-based criteria used for the initial determination of eligibility; or

2) The individual is no longer eligible for or enrolled in Medicaid, or the individual is no longer enrolled in the HCBS benefit.

This means that if a member met the initial needs-based eligibility criteria using the interRAI screening tool and would have continued to meet the eligibility criteria were it not for the change in assessment and criteria, the member must remain eligible for habilitation services until the member no longer meets the needs-based eligibility criteria that had been determined using the interRAI tool prior to the change in the assessment tool and needs-based eligibility criteria.

Iowa Medicaid is permitted to modify the needs-based criteria pursuant to 42 CFR 441.715 and will follow all applicable requirements outlined in these proposed rules.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 13, 2022. Comments should be directed to:

Nancy Freudenberg
Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 78.27(2) as follows:

78.27(2) *Member eligibility.* To be eligible to receive home- and community-based habilitation services, a member shall meet the following criteria:

~~*a. Age.* The member is at least 16 years of age or older.~~

~~*b.*~~ *a. LOCUS/CALOCUS actual disposition.* The member has a LOCUS/CALOCUS actual disposition of level one recovery maintenance and health management or higher on the most current LOCUS/CALOCUS assessment completed within the past 30 days.

~~*c.*~~ *b. Risk factors.* The member has at least one of the following risk factors:

(1) ~~The member has undergone or is currently undergoing psychiatric treatment more intensive than outpatient care (e.g., crisis response services, subacute mental health services, emergency services, alternative home care, partial hospitalization, or inpatient hospitalization) more than once in the member's life~~ The individual has a history of inpatient, partial hospitalization, or emergency psychiatric treatment more than once in the individual's life; or

(2) ~~The member is currently receiving habilitation or integrated health home services~~ The individual has a history of continuous professional psychiatric supportive care other than hospitalization; or

(3) ~~The member has a history of severe and persistent mental illness resulting in at least one episode of continuous, professional supportive care other than hospitalization (e.g., counseling, therapy, assertive community treatment, or medication management)~~ The individual has a history of involvement with the criminal justice system; or

(4) ~~The member has a history of severe and persistent mental illness resulting in involvement in the criminal justice system (e.g., prior incarceration, parole, probation, criminal charges, jail diversion program or mental health court)~~ Services available in the individual's community have not been able to meet the individual's needs; or

(5) ~~Traditional mental health services available in the member's community have not been able to meet the member's needs.~~ The individual has a history of unemployment or employment in a sheltered setting or poor work history; or

(6) The individual has a history of homelessness or is at risk of homelessness.

~~*d.*~~ *c. Need for assistance.* The ~~member~~ individual has a need for assistance ~~or is likely to need assistance related to functional impairment arising out of a mental health diagnosis typically~~ demonstrated by meeting at least two of the following criteria on a continuing or intermittent basis for at least 12 months:

(1) ~~The member is unemployed, is employed in a sheltered setting, or has markedly limited skills and a poor work history, and the member is currently receiving employment services or the member has a need for employment services to obtain or maintain employment~~ The individual needs assistance to obtain or maintain employment.

(2) The ~~member~~ individual requires financial assistance to reside independently in the community ~~or may be homeless or at risk of homelessness if unable to procure this assistance without help~~.

(3) The ~~member shows significant inability~~ individual needs significant assistance to establish or maintain a personal social support system.

(4) ~~The member requires help in basic living skills such as self-care, money management, housekeeping, cooking, and medication management~~ The individual needs assistance with at least one of the activities of daily living (ADLs) or instrumental activities of daily living (IADLs) to reside independently in the community.

(5) ~~The member exhibits social behavior that puts the member's safety or others' safety at risk, which results in the need for service intervention which may include crisis management or protective oversight~~ The individual needs assistance with management and intervention of maladaptive or antisocial behaviors to ensure the safety of the individual or others.

~~*e.*~~ *d. Income.* The countable income used in determining the member's Medicaid eligibility does not exceed 150 percent of the federal poverty level.

~~*f.*~~ *e. Needs assessment.* The LOCUS or CALOCUS tool has been completed in the LOCUS online system, and using the algorithm developed by Deerfield Solutions to derive the actual disposition score based on the comprehensive assessment and social history (CASH) completed by the integrated health home (IHH) or community-based case manager (CBCM) during a face-to-face interview with the member and the member's representative as applicable, and based on information submitted on the information submission tool and other supporting documentation as relevant, the IME medical services unit has determined that the member is in need of home- and community-based habilitation services. The LOCUS/CALOCUS information submission tools are available on request from the IME medical services unit. Copies of the information submission tool for an individual are available to that individual from the individual's case manager, integrated health home care coordinator, or managed care organization. The designated case manager or integrated health home care coordinator shall:

(1) and (2) No change.

~~*g.*~~ *f. Plan for service.* The department or the member's managed care organization has approved the member's comprehensive service plan for home- and community-based habilitation services. Home- and community-based habilitation services included in a comprehensive service plan or treatment plan that has been validated by the IME or the member's managed care organization shall be considered approved by the department. Home- and community-based habilitation services provided before approval of a member's eligibility for the program cannot be reimbursed.

(1) to (4) No change.